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No. 80-2038

IN THE

Supreme Court of the United States

October Term, 1980

THOMAS L. CHANNELL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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Questions Presented.

1. Whether petitioner was properly joined in an indictment where he was linked to only one of the three transactions joined in a single conspiracy count as well as in a single indictment; whether petitioner's timely and continuing motion to sever should have been granted.
2. Whether under the circumstances presented, the requested "separate conspiracy" instruction mandated by *Kotteakos v. United States*, 328 U.S. 750 (1946) should have been given; whether under these circumstances the jury was properly instructed.

List of Parties.

Defendants in the District Court were Thomas L. Channell, Rodney H. Burreson, Ronald L. Laraneta and Joseph J. Laraneta, all of whom appealed to the Ninth Circuit Court of Appeals, with the exception of Joseph J. Laraneta.

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Opinion Below.

The opinion of the court of appeals is reported at 643 F.2d 1344. The opinion is attached in our Appendix (App. A). On April 1, 1981, the Court denied the petition for rehearing, and modified its original opinion rendered February 9, 1981.

Jurisdiction.

The Jurisdiction of this Court is invoked pursuant to 28 USC §1254(1).

Statement of the Case.

After a twelve week jury trial in the United States District Court for the Central District of California, petitioner was convicted of the four counts of a sixteen count indictment in which he was charged (R. 1-30, 1233; App. B).[1]

[1] "R" is a reference to the Clerk's Record in the trial court. "R.T." refers to the Reporter's Transcript. "App." is a reference to the Appendix to this petition.

The charges stemmed from the operation and management of mutual funds by Ronald J. Laraneta and his brother, Joseph J. Laraneta. Ronald Laraneta was convicted on the fifteen counts in which he was charged. Joseph Laraneta was acquitted on the eleven counts in which he was charged. Another co-defendent, Rodney Burreson, was convicted on the conspiracy count and three of the six substantive counts in which he was charged.

Petitioner was the President and Chief Executive Officer of California Bankers Trust, ("C.B.T.") a substantial California Trust Company.[2] Petitioner owned a *de minimis* amount of C.B.T. stock (R.T. 7328).

Analysis of the indictment reveals that a multifaceted conspiracy was alleged, purportedly involving all defendants in a conspiracy commencing on or about January 1, 1973 and continuing until September 3, 1974 (R. 1-30; App. B). Petitioner, however, is named in only one overt act — the first alleged overt act — a July 10, 1973, transaction. The conspiracy count also alleges two later transactions, the "Petro Gas" and "Oh Boy!" transactions, as part of a continuous conspiracy and includes numerous allegations surrounding those transactions. Indeed, overt acts, numbers 9-16, involve only these later two transactions. (App B)

Petitioner sought severance and alerted the trial court as early as the pre-trial motion stage that he had no involvement with these latter two transactions. The evidence adduced at trial amply demonstrated 1) the discrete nature of those transactions and 2) petitioner's plain noninvolvement with those unrelated transactions.

Nevertheless, despite petitioner's noninvolvement, he was forced to defend a lengthy trial, a substantial portion of which was devoted to evidence on those two transactions.

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[2]During the two year period petitioner was Chief Executive Officer, the assets under management grew from approximately $10 million to approximately $250-$350 million (R.T. 6969-6977).

To petitioner's severe prejudice, the evidence of Laraneta's criminality on the unrelated Oh Boy! transaction was overwhelming. The prosecutor exacerbated the prejudice by continually stressing the commonality of the transactions and claimed an alleged "modus operandi." We tender to this Court also, the discrete issue of prejudice and error that occurred when, incredibly, despite proper and timely request (R. 923), the jury was never advised of the law involving separate conspiracies as required by *Kotteakos v. U.S.*, 328 U.S. 750 (1946) and its progeny.

Rather, the jury was continually advised that they could apply all acts and declarations against all conspirators (see, for example, R.T. 396-397, 807-816, 1669, 1703-1704, 3103-3109, 8586-8596); this typical conspiracy instruction was totally inapplicable and highly prejudicial under the circumstances present here. We turn then to a factual summary of these three transactions.

The July 10, 1973 Transaction.

During May, 1972, petitioner was introduced to co-defendant Burreson by a Director of C.B.T. (R.T. 6980-6981) Burreson was introduced as having an aggressive land development business (R.T. 6985). Petitioner understood from the outset that Burreson and Company was a very viable company with good potential (R.T. 7002). Soon thereafter, C.B.T. obtained Burreson's account and then computerized Burreson's collection process on trust deed notes.

During April, 1973, petitioner learned of the Laranetas from a C.B.T. Vice President and that the Laranetas, as managers of mutual funds, were desirous of obtaining a loan for their company, Charter Diversified Services ("Charter") to obtain the management of another mutual fund (R.T.7300-7303). Petitioner aided the obtaining of a loan because he was desirous of obtaining custody of the mutual funds accounts for C.B.T. (R.T. 7016-7018).

Petitioner participated in arranging a $750,000 loan to Charter from American City Bank, one of C.B.T.'s stockholders (R.T. 7021).

A loan guarantee was made by John Gilbert, a director of C.B.T. Because a further guarantor was needed, Burreson agreed to guarantee the other $500,000. The government's theory of the illegality of the transaction stemmed from the fact that Burreson had borrowed money from the fund. However, the issue as to whether petitioner ever disclosed Burreson's role as guarantor to the Laranetas was a hotly contested trial issue. Moreover, petitioner arranged the documentation for the transaction through attorneys (R.T. 7129-7131). The issue of the existence *vel non* of criminal intent by petitioner was also hotly contested. It is undisputed that petitioner received no personal reward for his participation in the transaction.

The Oh Boy! Transaction.

This separate transaction overwhelmingly established the criminal conduct of Ronald Laraneta. Despite the fact that it was alleged as part of the conspiracy, it had absolutely nothing whatsoever to do with petitioner or co-defendant Burreson.

Oh Boy! was a company engaged in the sale of frozen Italian food specialties and owned by one Pietro Vitale, a friend and neighbor of Ronald Laraneta, as well as a member of the Board of Directors of two of the Laranetas' mutual funds (R.T. 3572-3576). After the purchase of a third mutual fund by Laraneta, he caused that fund to purchase $350,000 of debentures and $550,000 of preferred shares of Vitale's company.

On October 24, 1973, the day the money was transmitted from the fund to Vitale, Laraneta told Vitale to bring a blank check for $550,000 to Laraneta's office and that a payee would be written in (R.T. 3626). At the office, Laraneta typed in "Basque Enterprises" which Laraneta advised was

a family company belonging to Laraneta's family (R.T. 3626-3627).

Later Laraneta gave Vitale a 15-year promissory note from Basque Enterprises (R.T. 3630-3633). When Vitale inquired of Laraneta about the 15-year note, Laraneta told him not to worry about it; it was just a financial statement accommodation for Basque Enterprises (R.T. 3633). Laraneta led Vitale to believe that the $550,000 would be available to Vitale's company; however, when Vitale needed the money, Laraneta told him that it was not available (R.T. 3638-3641). Thus, Oh Boy! never received the $550,000 (R.T. 3641).

A substantial amount of trial time was devoted to the Oh Boy! issue and to the poor financial condition of Oh Boy! We demonstrate below, that the evidence relating to the Oh Boy! transaction was qualitatively devastating to petitioner, despite its plain inadmissibility as to him. As we further demonstrate, the government made a continued, calculated effort (including the improper conspiracy charge itself) to lump all three transactions together and thus erroneously spill-over the highly prejudicial Oh Boy! (and Petro Gas) transactions to petitioner. In our view, the jury could never have afforded a discrete consideration to petitioner's state of mind, after evaluating Ronald Laraneta's conduct in the Oh Boy! (and Petro Gas) transactions.

The Petro Gas Transaction.

The Petro Gas transaction was also totally unrelated to petitioner. We argue and demonstrate *infra* that the prejudice of the improper joinder, and the improper inclusion into the conspiracy count, was exacerbated by the government's improper attempts to cause the jury to relate petitioner to this transaction, despite the government's knowledge to the contrary.

Petro Gas was a subsidiary of Burreson and Company (R.T. 914-933). Burreson was President, Chairman of the Board and Chief Executive Officer (R.T. 933).

On January 24, 1974, the Federated Dual Exchange Fund, one of the mutual funds controlled by the Laranetas, purchased a $750,000 debenture of Petro Gas (R.T. 935, 2105-2106, 2109). On January 25, 1974 (the same date the money was received), an account was opened on behalf of Petro Gas at Community Bank and the amount received for the funds was deposited in the Bank (R.T. 966, 968, 972). On that same date, Petro Gas wrote a check to North American Credit Corporation ("North American Credit"), a Burreson company (R.T. 969). It was undisputed that as of that date, North American Credit was inactive, had no business operation, nor had it ever operated (R.T. 973-974, 995). However, on that same date, North American Credit issued a $150,000 check to Charter as a loan (R.T. 996-1001).

A substantial amount of trial time was devoted to the Petro Gas transaction, including the government's extensive attempts to demonstrate the poor financial condition of the Burreson companies, including Petro Gas. (See for example, R.T. 4235, 4274-4275, 4280-4281, 4285-4287, 4606-4615, 4892-4894, 4913, 4945-4967, 5036-5038, 5055, 5059-5063, 5558-5571, 5664, 5671, 5676-5686, 5744, 5874-5875, 5958-5960, 5971-5973, 6062-6076, 6080-6120, 6152-6175, 6296-6299, 6612-6631, 6634-6667, 6698-6731, 6755-6798, 7676-7707, 7752-7756, 7781-7788, 7840-7855, 7868-7872, 7874-7878, 7884-7887, 7896-7897, 8070-8097, 8182, 8190, 8247-8255).

The government also spent considerable time in an effort to demonstrate that Burreson changed the company's name from Burreson Petro Gas to Commercial Petro Gas on the day prior to the transaction, in an effort to hide from the Board of Directors of the mutual fund that it was a Burreson-related investment. (See for example, R.T. 957-963, 1170,

4607-4608, 4316, 5560-5609, 5618-5620, 5839, 6063, 6067, 6360-6371, 7681-7682).

Despite the fact that petitioner was not involved in the Petro Gas transaction, we demonstrate below that the government's conduct seriously and unfairly impacted upon his right to a fair trial.

ARGUMENT.

A. Petitioner Was Improperly Joined in an Indictment Where He Was Linked to Only One of Three Transactions; Petitioner's Timely and Continuing Motion to Sever Should Have Been Granted.

The indictment alleged that petitioner participated in a conspiracy with three others involving transactions related to mutual funds. However, analysis of the indictment and indeed of the evidence adduced at trial, reveals three separate transactions, two of which plainly did not involve petitioner. It was manifest from the outset that the joinder of petitioner was improper and that petitioner should have been severed. Yet, the government succeeded in misleading the district court as to the propriety of joinder. The government knew full well at the outset that petitioner was improperly joined, yet in its desire to avoid multiple trials as prescribed by law thwarted justice by improperly joining all defendants and all transactions in a common indictment. We urge within that this Court's intervention is necessary to deter such serious government over-reaching manifested by this record; and to establish proper guidelines to guide the lower courts.

Unfortunately, the court of appeals cavalierly passed over the issues we tender. The court incorrectly viewed the common modality by Laraneta as validating the indictment. Yet, fair scrutiny manifestly reveals the injustice which occurred to petitioner in the trial court.

The Pretrial Motion to Sever.

Analysis of the indictment reveals that a multifaceted conspiracy is alleged, purportedly involving all defendants in a conspiracy commencing on or about January 1, 1973 and continuing until September 3, 1974 (R.1-15; App. B). Yet, petitioner is named in only one overt act, an act involving the July 10, 1973 transaction (R.13; App. B). The conspiracy count also alleges that two separate transactions

— the Petro Gas and Oh Boy! transactions — were part of a continuous conspiracy, and includes numerous allegations surrounding those transactions. Indeed, overt acts, numbers 9-16, involve *only* these latter two transactions (R.14-15; App. B).

The evidence adduced at trial plainly reveals that petitioner had no connection to either of those two latter transactions. Yet, the jury was never advised of the law involving separate conspiracies as required by *Kotteakos v. United States*, 328 U.S. 750, 66 S.Ct. 1239 (1946) and its progeny, despite request (R.923). Rather, the jury was continually, improperly advised that they could apply all acts and declarations against all conspirators (see for example, R.T. 396-397, 807-816, 1669, 1703-1704, 3103-3109, 8586-8596).

Thus, the jury was free to misuse the unrelated Laraneta (Oh Boy!) transaction and the unrelated Laraneta-Burreson (Petro Gas) transaction to spill over and prejudice the resolution of petitioner's guilt or innocence. We have challenged the government's good faith in including petitioner in a conspiracy which allegedly encompassed all three transactions, and which allegedly involved a time period from January 1, 1973 to on or about September 3, 1974.

We demonstrate, below, that the government well knew that even taken in a light most favorable to the government, the purported conspiracy did not include all three transactions. In short, as we urge below, the government deliberately drew an indictment which it knew would have a fatal variance from its trial proof. The principles of prejudice explicated by *Kotteakos, supra*, and its progeny, were manifest from the outset. The government plainly drafted the indictment in this fashion to avoid the necessity of separate trials. However, as was clear from the outset, the government's proof would not and, indeed, did not conform; a separate trial for petitioner was plainly mandated, but avoided due to the government's disingenuous conduct.

From the earliest stages, counsel for petitioner sought to avert the prejudice that necessarily would result and indeed did result from petitioner having to defend a complex and convoluted trial in which the continual "spill over" prejudice was both calculated and realized.

Prior to trial, petitioner's counsel filed a detailed motion requesting severance pursuant to Rules 8 and 14, Federal Rules of Criminal Procedure (R. 31-41). This motion demonstrated the impropriety of the joinder to the trial court at the very earliest opportunity. The motion properly alerted the court that three separate and unrelated transactions were involved.

The government's response to the severance motion was meritless as indeed it had to be under the circumstances. The government improperly advised the court that all defendants "were properly joined as integral members of a conspiracy involving the commission of factually related substantive offenses" (R. 75). The government claimed that the indictment "reveals a single fraudulent scheme underlying both the conspiracy and the substantive offenses committed in furtherance thereof" (R. 76) and that "a common *modus operandi* was employed to effect the fraudulent paybacks in all of these transactions" (R. 77).

While the government's response thus created surface appeal, it could not withstand scrutiny. First, the mere fact that Ronald Laraneta may have used a similar *modus operandi* in all three transactions and that Burreson and Laraneta may have used a similar *modus operandi* in two transactions, did not thereby render the joinder of petitioner proper. To the contrary, it plainly suggested the potential prejudice of joining the transactions because of the potential "spill-over" effect. This prejudice was continually demonstrated during the trial.

It is critical to recognize that after petitioner's pretrial motion to sever was denied, the government later advised the court after its opening statement that it took the position

that after the July 10, 1973 transaction "what simply happens is Mr. Channell dropped out of the conspiracy" (see R.T. 439). In resisting petitioner's motion to dismiss and to sever renewed at the conclusion of the government's opening statement, the government stated (R.T. 439; see also R.T. 1656):

> I think it's our position in this case that it was the conspiracy formulated by the four defendants, that it had certain purposes with respect to the first transaction; that after the first, *what simply happens is Mr. Channell dropped out of the conspiracy*. It continued on with Mr. Laraneta, and had the same purposes, that is, to divert money of the mutual funds. Then thereafter they picked up Joseph Laraneta and Burreson again later on. [Emphasis added]

Yet, in its opposition to the pretrial severance motion, the government then urged that petitioner's company, C.B.T., had a significant stake in the continued growth and prosperity of the Laranetas' and Burreson's companies (R. 78)[3] and that "during the period in which all three of the fraudulent transactions were consummated, Channell's company was responsible for the physical custody of the Funds' assets . . ." (R. 79). This, of course, is a highly disingenuous statement. Plainly, the fact that a company of which petitioner was President had physical custody of funds is meaningless unless knowledge, wilfullness and participation in the Laranetas' and/or Burreson's activity was demonstrated.

The court of appeals also grasped on this patently transparent argument that petitioner was involved in the transactions by concluding that petitioner "had an overall interest

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[3]The reference to "Channell's company, C.B.T." also created an unfair inference. Appellant CHANNELL was an employee with a *de minimis* ownership of shares.

in the transactions, because both Burreson and Laraneta were his clients'' (App. A at p. 5).

The court's argument is totally fallacious.

Under such erroneous reasoning, a banker would be criminally responsible if a bank customer deposits ill gotten gains into the bank. We know of no rule of law that vicariously imputes liability for the act of clients, even if one was previously involved in a separate transaction.

Unfortunately, the vice of the government's reasoning has eluded both lower courts.

During the course of the trial, the prosecutor continually tried to prejudice petitioner by lumping all three transactions together, by attempting to display an alleged commonality of the transactions and thus spilling over the prejudice from the unrelated transactions upon petitioner (see for example R.T. 399-400, 625-628, 2031, 4461, 5926-5928, 7993-7997, 8082-8083, 8100, 8113, 8516-8519). The truly egregious actions of the prosecutor in coalescing these transactions was compounded in closing argument, where the prosecutor stressed (R.T. 7992):

> Now, in each of these three kickback transactions you will see that there is a common method, a common MO. In each case the kickback was papered over to look like something else.

The prosecutor continued to refer to the defendants as ''they'' although he was well aware that petitioner was not involved in two of the three transactions (see R.T. 7995-7998).

A classic illustration of the attempts by the prosecutor to spill over the prejudice to petitioner is presented in his further argument:

> Now, the defendants want you to believe that all of the transactions in this case were just a series of very costly coincidences. The key issue for you to resolve in this

case is: coincidence or conspiracy? The evidence gives you a very clear answer to that question.

Later, the prosecutor referred to the Oh Boy! transaction as "[i]n a familiar pattern, a pattern you have seen repeated twice already" (R.T. 8100). (See also R.T. 8113, 8516-8519). (See also R.T. 8086 where, in reference to the Petro Gas transaction, the prosecutor contends that "the defendants' explanation for making this investment is another phony story *they* told you," despite the fact that the record amply reveals that petitioner was unquestionably not involved in making this investment).

The prosecutor reiterated his "coincidence or conspiracy theme" (See R.T. 8044, 8066) and continually emphasized the "familiar pattern" and commonality between the transactions (see *e.g.* R.T. 7992-7997, 8082-8083, 8100, 8113, 8516-8519).

The harm to petitioner was thus manifested in several ways. It emanated first from the prejudicial and improper joinder. Although misled by the government, the trial court erred in not granting the pretrial motion to sever. In any event, the court failed to exercise the proper vigilance to protect against prejudice and plainly erred in not exercising its continuing duty to sever during the trial. See *Schaffer v. United States*, 362 U.S. 511, 516, 80 S.Ct. 945, 948 (1960); *United States v. Somers*, 496 F.2d 725 (3rd Cir. 1974), *cert. denied* 419 U.S. 832 (1974). As discussed below, the error was severely compounded when the court ignored its duty to protect petitioner with appropriate multiple conspiracy instructions.[4]

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[4]The court erroneously accepted the government's theory. After the government contended that petitioner was "named in a conspiracy which embraces the Oh Boy! transaction" (R.T. 2031), the court accepted the government's view that "while [counsel for petitioner] contend[s] there are three separate and distinct transactions, it is [the government's] position that this is one conspiracy in which three transactions were the central elements" (R.T. 2035). As we discuss, the court improperly failed to even submit the multiple conspiracy issue to the jury for its consideration or to give any cautionary instructions pertaining to multiple conspiracies.

It is critical for this Court to grant review to establish guidelines for the lower courts in interpreting Rule 8 of the Federal Rules of Criminal Procedure. The Court below misapprehended facts and law in upholding joinder. The purpose of Rule 8(b) is to balance the need to avoid the potential prejudice that may result from joining multiple defendants with the need to attain trial efficiency.

Here, the lower courts placed far too great a weight on trial efficiency, to the detriment of fundamental fairness and in contravention of the principles underpinning Rule 8(b).

Thus, in *United States v. Levine*, 546 F.2d 658 (5th Cir. 1977), the Court discussed improper joinder under Rule 8(b). The Court found that allegations of proximate conspiracies involving two groups of defendants and a commond "hub" defendant was legally insufficient to establish a single overall conspiracy.

The *Levine* court indicated that the real underpinning for the government's conspiracy count was "the false legal premise that proof of proximate or simultaneous conspiracies with one common conspirator was sufficient to establish the existence of a single conspiracy. * * * This is simply not so." *Levine, supra*, at p. 665.

Where a misjoinder under Rule 8(b) is found, even it if would cause no "special prejudice" to the movant, severance must be ordered. *United States v. Hilliard*, 436 F.Supp. 66, 72 (S.D.N.Y. 1977), citing *Cupo v. United States*, 359 F.2d 990, 993 (D.C. Cir. 1966), *cert. denied* 385 U.S. 1013, 87 S.Ct. 723 (1967); *Ward v. United States*, 289 F.2d 877, 878 (D.C. Cir. 1961); *Ingrahm v. United States*, 272 F.2d 567, 570 (4th Cir. 1959); see *Schaffer v. United States*, 362 U.S. 511, 513, 80 S.Ct. 945 (1960); *United States v. Grasso*, 55 F.R.D. 288, 291 (E.D. Pa. 1972).

The action of the government here in causing the improper joinder cannot be sanctioned. This situation is extremely troubling and requires corrective action by this Court.

Under the facts of this case, it was plainly improper to include this multifaceted conspiracy charge, with the government knowing full well that its evidence would demonstrate a variance. Yet, it is plainly the conspiracy charge and the government's meritless and disingenuous response to the pretrial severance motion that continually misled the court and caused denial of the motion to sever. See also *Williamson v. United States*, 310 F.2d 192, 197 fn. 6 (9th Cir. 1962).

Under these circumstances, petitioner should have been severed.

B. The Court Improperly Failed to Submit a Multiple Conspiracy Instruction to the Jury; the Jury Was Thus Improperly Instructed.

The government reaped the benefit of its misuse of the conspiracy charge by the improper instructions given to the jury. Despite defense request (R. 923), the jury was never advised of the law on separate conspiracies. From the outset, the jury was told that they could consider all acts and declarations in furtherance of the conspiracy against all defendants. The instructions to the jury were misleading and confusing (see R.T. 396-397, 807-816, 867-868, 1669, 2005-2006, 3103-3106, 3109, 8586-8596), as was the argument of the prosecutor (see for example R.T. 399-400, 7993-7997, 8044, 8082-8083, 8086, 8100, 8113, 8128-8130, 8516-8519). Despite request, the jury was not given any instructions to alert them that in order to be admissible against a particular defendant, the statement had to be made in the course of and in furtherance of the *specific* conspiracy in which they found petitioner to be involved.

The evidence in this case displayed a fatal variance from the indictment that necessarily prejudiced petitioner. While the indictment alleged one conspiracy, nevertheless, even in a light most favorable to the government, the evidence did not link petitioner to the Oh Boy! transaction which

involved only Laraneta, or to the Petro Gas transaction which involved Laraneta and Burreson. As we have detailed, the prejudice to petitioner was overwhelming.

It is indeed significant to recognize that the government knew full well prior to trial that its evidence would not prove the single conspiracy alleged in the indictment. The government's zeal to avoid separate trials cannot overcome petitioner's substantial right to a fair trial. We respectfully request this Court not to place its *imprimatur* on such callous disregard of a defendant's right to have his guilt or innocence determined in a trial where only evidence that is admissible against *him* affects that determination. Indeed, as we demonstrate, the jury was never given any guidance against using the inadmissible evidence against petitioner despite proper and timely request.

The seminal case, of course, for evaluating the prejudice inherent in a variance between the one conspiracy alleged and multiple conspiracies proved is, of course, *Kotteakos v. United States*, 328 U.S. 750, 66 S.Ct. 1239 (1946). There, the Court recognized the "vital difference" between a properly instructed jury and one which is not guided as to the law of separate conspiracies.

The Court further recognized that under the circumstances there presented, the defendant's substantial rights were affected "[t]hat right in each instance was the right not to be tried en masse for the conglomeration of distinct and separate offenses committed by others as shown by this record" (*Id.* at 775-776).

It emerges from the present record that petitioner was fatally prejudiced by the manner of handling the conspiracy charge from start to finish. From the outset, it was clear that there would be a variance — that the single alleged conspiracy could not be proven. Yet, despite the continual efforts of counsel to avert the prejudice, the trial court allowed the prosecution full reign. Incredibly, the jury never was instructed in any fashion that they could not use the

Petro Gas and Oh Boy! transactions against petitioner. There was simply no instruction whatsoever on the issue of separate conspiracies. The law, of course, plainly requires otherwise.

Kotteakos' progeny plainly establishes that the issue of separate conspiracies must be submitted to the jury and the jury properly cautioned. Here, despite a properly and timely requested instruction, which correctly stated the law, no such instruction was given (R. 923).

Thus, in *United States v. Griffin*, 464 F.2d 1352 (9th Cir. 1972), *cert. denied sub nom. Montano v. United States*, 409 U.S. 1009, 93 S.Ct. 444 (1972), the Court recognized that the concerns underpinning *Kotteakos* could be softened by cautionary instructions as recommended in *United States v. Valleri*, 407 F.2d 735, 746 (7th Cir. 1969), *cert. denied* 405 U.S. 1040, 92 S.Ct. 1311 (1972). Quoting with approval from *Valleri*, the *Griffin* Court instructed (at 1357):

> Since the existence of multiple conspiracies is really a fact question as to the nature of the agreement, it is for the jury to decide whether there is one agreement or several. (citations omitted). Therefore, . . . when the possibility of a variance appears, [the trial judge] should instruct the jury on multiple conspiracies as well. (citations omitted).
>
> Accord, *United States v. Bless*, 422 F.2d 210, 213 (2d Cir. 1970).

Recently, in *United States v. Eubanks*, 591 F.2d 513 (9th Cir. 1979), the Court reversed a conspiracy conviction due to variance and failure to instruct on multiple conspiracies. The concurring opinion of Judge Ely is particularly instructive in the context of the present case (591 F.2d at 521-524).

The trial court plainly erred in not submitting a multiple conspiracy instruction to the jury.

Such an instruction was previously required in the Ninth Circuit, but that rule was ignored by the courts below. See *United States v. Eubanks, supra; United States v. Griffin,* 464 F.2d 1352, 1357 (9th Cir. 1972), *cert. denied sub nom. Montano v. United States,* 409 U.S. 1009, 93 S.Ct. 444 (1972); *United States v. Roselli,* 432 F.2d 879, 898 (9th Cir. 1970), *cert. denied* 401 U.S. 924 (1970) ("Whether there was one conspiracy or two was a question of fact for the jury."); *United States v. Bracy,* 566 F.2d 649, 658 (9th Cir. 1977); see also *United States v. Crosby,* 294 F.2d 928, 945 (2d Cir. 1961); *United States v. Johnson,* 515 F.2d 730 (7th Cir. 1975) ("plain error" to fail to give an instruction on multiple conspiracies when the possibility of variance appeared); *United States v. Varelli,* 407 F.2d 735, 746 (7th Cir. 1969); *United States v. Calabro,* 449 F.2d 885, 893-894 (2d Cir. 1971), *cert. denied,* 405 U.S. 928, 92 S.Ct. 978 (1972).

The instant case presents a truly egregious situation. Petitioner was forced to sit through a twelve week trial in which highly prejudicial information was introduced against his co-defendants. Indeed, the government continually exacerbated the prejudice, not only by including the improper conspiracy charge, but by its continual attempts to lump all three transactions — to spill over the "common m.o." to prejudice the jury's consideration of whether petitioner was truthful in his defense.

The most incredible and indeed most damaging aspect perhaps is that the jury received no guidance whatsoever as to the use of the transactions and declarations in which petitioner was involved. Thus, the single conspiracy charge worked its intended evil, contrary to the law. See *United States v. Bastone,* 526 F.2d 971 (7th Cir. 1975), *cert. denied* 425 U.S. 973, 96 S.Ct. 2172 (1976) ("by simply charging one conspiracy, the government was able to present a mass

of evidence which reflected equally on the most culpable to the most innocent of the defendants''). See also *Fitzgerald v. Seamans*, 553 F.2d 220 (D.C. Cir. 1977) (''separate conspiracies may not be characterized as a single grand conspiracy for procedural advantage'').

The manifest prejudice follows *afortiori* where, as here, not only is a properly requested instruction not given — but rather, the jury is given a series of instructions advising them that they can use all acts and declarations against all persons they determine to be conspirators. Petitioner was, of course, entitled to an instruction that the jury was not to consider any act ''unless [they] should find beyond a reasonable doubt that the person doing the act, [or] making the declaration, was a member of the same conspiracy as was the defendant'' *United States v. Bracy, supra*, 566 F.2d 649 (9th Cir. 1977). This verbiage which was approved by the Court in *Bracy* was precisely requested by petitioner, but refused by the trial court (R. 923). Under the circumstances of this case, the refusal to give such an instruction was error of the grossest kind. The error was compounded by the given instructions.

Thus, the instant case presents an opportunity to clarify these important precepts of law and to correct a serious injustice.

Conclusion.

For the foregoing reasons, it is respectfully requested that the petition for a writ of certiorari be granted.

Respectfully submitted,

RICHARD L. ROSENFIELD,
Attorney for Petitioner.

Of Counsel,
FLAX AND ROSENFIELD.

APPENDIX A.
Opinion of the Court of Appeals.

United States of America, Plaintiff-Appellee, v. Rodney H. Burreson, Ronald L. Laraneta, Thomas L. Channell, Defendants-Appellants. Nos. 78-1782, 78-1912 and 78-1774.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Sept. 16, 1980. Decided Feb. 9, 1981. As Modified on Denial of Rehearing April 1, 1981.

Appeal from the United States District Court for the Central District of California.

Before Trask and Skopil, Circuit Judges and Solomon,* District Judge.

Solomon, District Judge.

Rodney Burreson, Ronald Laraneta, and Thomas Channell were indicted for various violations of the Investment Company and Investment Advisers Acts of 1940, securities fraud, and mail fraud, 15 U.S.C. §§80a-1 *et seq.* and 80b-1 *et seq.*, 77q, 1341; and for conspiracy, 18 U.S.C. §371. The Investment Acts make it unlawful for the managers of mutual funds to convert those funds; to engage in self-dealing in financial transactions; or to engage in fraudulent, deceptive, or manipulative practices. 15 U.S.C. §§80a-36, 80a-17, 80b-6. All appellants were charged and found guilty on the conspiracy count. Burreson was charged with six substantive counts and was found guilty on three of them. Channell was charged with three substantive counts and was found guilty on all of them. Laraneta was charged on fifteen substantive counts and was also found guilty on all of them. Burreson and Channell were given two year concurrent sentences. Laraneta was given a three year concurrent sentence. Each appellant was fined. Appellants do

*Honorable Gus J. Solomon, Senior United States District Judge, District of Oregon, sitting by designation.

not contest the sufficiency of the evidence convicting them, but raise many other grounds for their appeals.

We affirm.

FACTS

Appellant Channell was the President and Chief Executive Officer of California Banker's Trust Company. Appellants Burreson and Laraneta were clients of the trust company.

Burreson was the President of Burreson and Co. and Burreson Petro-Gas Co. Both needed financing.

Laraneta was the Chairman of the Board of Charter, an investment adviser; two other investment adviser firms; and three mutual funds. Laraneta wanted financing to acquire other investment firms.

The evidence at trial showed three fraudulent transactions. In the first transaction, which took place in July of 1973, Channell arranged for Laraneta's mutual funds to invest in Burreson and Co. Burreson used part of that loan to purchase a Certificate of Deposit that provided security for a bank loan to Charter.

The second and third transactions also involved investments by Laraneta's companies. In October of 1973, one of Laraneta's mutual funds invested in Oh Boy! Industries, which returned some of that money to Laraneta in the form of a loan. In July of 1974, another Laraneta fund invested in Burreson Petro-Gas Co., and Burreson lent some of the money to Laraneta.

CONTENTIONS

Appellants contend that they were improperly joined in the same indictment, and that their motions to sever should have been granted.

Appellants also contend that the Government included three separate conspiracies in one conspiracy count, and that they were therefore prejudiced by evidence concerning transactions in which they were not involved. They assert that the proof at trial established multiple conspiracies, and that the jury should have been given a multiple conspiracy instruction.

There is no merit in these contentions. The evidence at trial showed three interconnected fraudulent transactions. The transactions involved the same group of people, the same group of mutual funds, the same method, and a common participant (Laraneta).

Joinder

Rule 8(b) of the Federal Rules of Criminal Procedure allows joinder of defendants "if they are alleged to have participated . . . in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

In *United States v. Roselli*, 432 F.2d 879 (9th Cir. 1970), *cert. denied*, 401 U.S. 924, 91 S.Ct. 883, 27 L.Ed.2d 828 (1971), we held that so long as all defendants participated in the same series of transactions, defendants may be joined even though not all defendants participated in every act. *See also United States v. Ford*, 632 F.2d 1354, 1370 (9th Cir. 1980).

In *United States v. Patterson*, 455 F.2d 264 (9th Cir. 1972), we held that when the transactions are basically the same, and when one person serves as a common link between the transactions, joinder under Rule 8(b) is proper.

As in *Patterson*, the appellants here were involved in an "intricate and highly sophisticated" scheme to divert mutual funds. In each transaction, part of the proceeds of the

investment was returned to Charter, in the form of a loan, and in each, an intermediary was used, as well as fraudulent documentation, to cover up the return of at least part of the money to Charter.

We hold that joinder was appropriate.

Severance

Channell and Burreson assert they were prejudiced by testimony on transactions in which they were not involved, and that their motions to sever under Rule 14 of the Federal Rules of Criminal Procedure were improperly denied.

There is no indication here that appellants were prejudiced by being tried together. Each was represented by independent counsel, and the jury was instructed to consider the evidence separately for each defendant. *United States v. Camacho*, 528 F.2d 464 (9th Cir.) cert. denied, 425 U.S. 995, 96 S.Ct. 2208, 48 L.Ed.2d 819 (1976). In fact, on several charges, the jury found one or more defendant guilty, and another not guilty, on the same charge. *See United States v. Campanale*, 518 F.2d 352, 359 (9th Cir. 1975), *cert. denied*, 423 U.S. 1050, 96 S.Ct. 777, 46 L.Ed.2d 638 (1976).

There was no abuse of discretion here. The appellants' motions to sever were properly denied.

Conspiracy

The evidence showed that Laraneta was a direct participant in each transaction; the loans were made to and by his mutual funds.

Channell was also involved in each of these transactions. In the first, he arranged for Laraneta to invest in Burreson's company. In the second, as custodian for the mutual funds, he handled the paperwork for the investment, and the loan to Laraneta was used to repay the loan Channell had ar-

ranged for Charter in the first transaction. In the third, Channell arranged for the return of Charter stock to Laraneta, which was a precondition to Laraneta's investment in Petro-Gas. In addition, Channell had an overall interest in the transactions, because both Burreson and Laraneta were his clients.

Burreson's companies were directly involved in the first and third transactions. Burreson may not have been directly involved in the second transaction, but Laraneta's concern for his earlier investment in Burreson and Co. motivated this transaction.

In any event, it is not necessary for each defendant to participate in all of the overt acts in a single conspiracy. A single conspiracy may exist even though each defendant plays a different role in it. *United States v. Camacho, supra; United States v. Jones,* 425 F.2d 1048, 1051 (9th Cir. 1970), *cert. denied* 402 U.S. 950, 91 S.Ct. 44, 27 L.Ed.2d 51 (1971). Here, each appellant participated significantly in the overall conspiracy. There was substantial evidence to support the government's theory of a single conspiracy. *United States v. Perry,* 550 F.2d 524 (9th Cir.), *cert. denied,* 431 U.S. 918, 97 S.Ct. 2182, 53 L.Ed.2d 228 (1977). There was no variance.

All appellants contend they were prejudiced because the jury was not given an instruction on separate conspiracies and was therefore precluded from finding that the proof established separate conspiracies. They argue that such an instruction is required by *Kotteakos v. United States,* 328 U.S. 750, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946).

In *Kotteakos,* a single conspiracy was charged where thirty-two defendants were charged with conspiracy to violate the National Housing Act. Each defendant individually participated in a fraudulent loan scheme with Brown, the

only defendant who participated in all of the fraudulent transactions. No connection between the defendants was established other than that each obtained his fraudulent loan through Brown. The government conceded that the proof established several conspiracies, and the Supreme Court reversed the appellate court's determination that the failure to give a multiple conspiracy instruction in that situation was not prejudicial.

Unlike defendants in *Kotteakos*, appellants here were connected to each other through their financial transactions, and the transactions themselves were interrelated. Under these facts it was not error for the trial judge to refuse to give a multiple conspiracy instruction; the proof clearly established a single conspiracy. *United States v. King*, 472 F.2d 1 (9th Cir.), *cert. denied*, 414 U.S. 864, 94 S.Ct. 37, 38 L.Ed.2d 84 (1973).

In our view, the instructions were adequate when considered as a whole. Even if it might have been desirable for the court to give an instruction on multiple conspiracies, we do not believe it caused any harm, and does not require reversal. *United States v. Perry, supra*, at 533; *United States v. Lutz*, 621 F.2d 940, 942-943 (9th Cir. 1980).

Evidentiary Rulings

Prudence of Investments. Appellants contend that the testimony on the prudence of Laraneta's investments was irrelevant and that they were prejudiced by this testimony. We disagree. The indictment itself put the worth of the investments in issue, and the evidence tended to establish motive for the appellants' participation in the transactions. *United States v. Tierney*, 424 F.2d 643, 647 (9th Cir.,) *cert. denied*, 400 U.S. 850, 91 S.Ct. 53, 27 L.Ed.2d 87 (1970).

Expert Witness. Appellants contend that Alan Gordon, a government expert, was improperly allowed to testify

about the benefits of investing in mutual funds; the nature and extent of the fiduciary duty of an investment management company to a fund and its investors; and the nature of restricted security investments by mutual funds. They argue that his testimony went beyond the charges facing appellants and was irrelevant and prejudicial. Appellants also contend that Gordon was improperly permitted to testify, as a fact witness, about the values of the Funds' investments when he assumed his duties as Special Counsel to the Funds during the Securities and Exchange Commission (SEC) investigation.

Before Gordon testified, the district court considered appellants' objections to his testimony. In response to their objections, the court required the government to make an offer of proof and restricted the scope of Gordon's testimony. He also cautioned the jury on the use of expert testimony.

We have examined the testimony and in our opinion permitting Gordon's testimony was within the court's discretion. There was no abuse here. *Hamling v. United States*, 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974).

Prior Testimony. The United States Attorney read prior sworn testimony of the appellants Burreson and Laraneta before the SEC. This testimony was on the fraudulent transactions and was offered as a "party admission" under Fed.R.Evid. 801(d)(2). Appellants do not challenge the truth of the testimony heard by the jury, but raise three other objections.

They first contend that because they were not permitted to introduce the entire testimony, or, alternatively, explanatory portions of it, the decision to admit the portion offered by the government violated the "rule of completeness" of Fed.R.Evid 106. The record shows that the trial court care-

fully considered the entire transcript, and added material to the excerpt offered by the government to put it in proper context. The court concluded that the portion appellants wished to submit was irrelevant and was inadmissable hearsay. This decision was not an abuse of the District Court's discretion, and appellants' argument is therefore without merit. *United States v. Phillips*, 577 F.2d 495, 501 (9th Cir.), *cert. denied*, 439 U.S. 831, 99 S.Ct. 107, 58 L.Ed.2d 125 (1978); *United States v. McCorkle*, 511 F.2d 482, 487 (7th Cir.), *cert denied*, 423 U.S. 826, 96 S.Ct. 43, 46 L.Ed.2d 43 (1975).

Appellants next contend that, under the rule of *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), the court erred in not editing the testimony to remove all references to appellants and their companies. Burreson argues that his name was mentioned frequently and so were his companies, particularly in Laraneta's testimony about the Funds' investments. *Bruton* does not require that all references to codefendants be eliminated. It only requires the elimination of those that directly implicate a defendant other than the declarant, when that identification is not established by independent evidence. In addition, *Bruton* is of questionable applicability because the declarant, Ronald Laraneta, testified at the trial and was available for cross examination. There was nothing improper in the admission of this testimony as edited. *United States v. Brashier*, 548 F.2d 1315, 1325 (9th Cir. 1976), *cert. denied*, 429 U.S. 1111, 97 S.Ct. 1149, 51 L.Ed.2d 565 (1977); *United States v. Brown*, 551 F.2d 639, 647, *rev'd on other grounds*, 569 F.2d 236 (5th Cir. 1978) (en banc).

Appellants next contend that they should have been permitted to introduce more of the prior testimony, that the admitted testimony was improperly edited, and that they were forced to testify in violation of their Fifth Amendment

rights to explain away the prejudice resulting from these errors.

There is no merit in these contentions. Each appellant chose to take the stand, and each testified at length, on matters far beyond the scope of the prior testimony. Their testimony, even if partly motivated by a desire to respond to evidence admitted against them, was not "compelled" testimony. *United States v. Hearst*, 563 F.2d 1331, 1339 (9th Cir. 1977), *cert. denied*, 435 U.S. 1000, 98 S.Ct. 1656, 56 L.Ed.2d 90 (1978).

Other Evidentiary Rulings. Appellants raise many other challenges to evidentiary rulings. We have examined each of them and find that none has any merit.

Prosecutorial Misconduct

Appellants allege that the government was guilty of prosecutorial misconduct when the United States Attorney failed to tell the Grand Jury that one of its witnesses had given inconsistent and perjured testimony to the SEC. Appellants argue that this required the District Court to dismiss the indictment. But they did not move to dismiss the indictment before trial. Any motion thereafter made was untimely under Rule 12(b) of the Federal Rules of Criminal Procedure.

Appellant Burreson contends that in three instances, the government deliberately allowed its witnesses to give false testimony. In one of them, the government demonstrated to the District Court a good faith belief in their witness's story, by showing the Judge their pretrial interview notes and later conceding in the closing argument that the testimony was contradictory. In the second and third instances, there was contradictory testimony, but there is no indication that the government intentionally attempted to introduce false testimony or that it acted in bad faith.

Appellants argue that the government committed other acts of misconduct. They include distributing underlined exhibits; handsignalling; improper comments; improper questions; missing documents; and errors in the closing argument. They argue that the cumulative effect of these errors requires reversal. Some of the assertions of misconduct were for clerical errors which the government acknowledged and which the jury was instructed to disregard. These alleged errors were minor and innocent. The evidence of guilt was so overwhelming that no appellant challenged the sufficiency of the evidence against him. All appellants received fair trials. The errors, if any, were harmless.

Jury Instructions

Appellant Burreson contends that because the jury requested reinstruction on the elements of knowledge, willfulness, and unlawfulness, they were not properly instructed on them originally, and that he was prejudiced by this error.

The judge carefully defined these terms and repeated them in connection with different counts. Considered as a whole, the instructions on these elements were adequate.

Burreson also contends that the jury was improperly required to return a partial verdict. In our view, the request for a partial verdict was procedurally proper, because of the length and complexity of the trial and the length of the jury's deliberations.

Finally, Burreson challenges the instructions to the jury on the Investment Company and Advisers Acts. We have reviewed those instructions and we find that they are correct and adequate.

Counts Four, Eight, and Twelve

Appellants challenge counts four, eight, and twelve of the indictment for failure to include the words "knowingly and willfully". We find no merit in this contention. *See*

United States v. Anderson, 532 F.2d 1218 (9th Cir.), *cert. denied*, 429 U.S. 839, 97 S.Ct. 111, 50 L.Ed.2d 107 (1976).

Laraneta's Sentence

Appellant Laraneta contends that his three year concurrent sentence on counts two through nine of the indictment was improper because at the time the offenses were committed, the Investment Company and Investment Advisers Acts carried a two year maximum sentence (15 U.S.C. §§ 80a-48 and 80b-17, as amended in June 1975). This is correct.

We affirm Laraneta's conviction on all counts and the three-year sentence on the conspiracy count. We remand to the District Court solely for the court to correct the sentences on counts two through nine and to impose sentences on those counts of not to exceed two years.

The convictions and sentences of appellants Burreson and Channell are affirmed on all counts.

APPENDIX B.

Indictment.

United States District Court, Central District of California, March 1976, Grand Jury. No. CR 77-243.

United States of America, Plaintiff v. Rodney H. Burreson, Ronald J. Laraneta, Thomas L. Channell, Joseph J. Laraneta, Defendants. [18 U.S.C. §371; Conspiracy; 15 U.S.C. §80a-36: Larceny and Embezzlement; 15 U.S.C. §80a-17(d): Joint Transaction with Affiliated Person; 15 U.S.C. §80a-17(e): Acceptance of Compensation by Affiliated Person; 15 U.S.C. §80b-6: Prohibited Transactions by Investment Advisors; 15 U.S.C. §77q(a): Fraud in Purchase and Sale of Securities; 18 U.S.C. §1341: Mail Fraud; 18 U.S.C. §2: Aiding and Abetting] Filed February 24, 1977.

The Grand Jury charges:

COUNT ONE
[18 U.S.C. §371]

Introduction.

1. Al all relevant times herein, the Vanderbilt Mutual Fund, Inc. (the "Vanderbilt Fund"), the Pegasus Fund, Inc. (the 'Pegasus Fund"), and the Pegasus Income and Capital Fund, Inc. LS:dmm (the "PIC Fund") were registered investment companies (commonly known as mutual funds) within the meaning of the Investment Company Act of 1940, 15 U.S.C. §80, et seq. (the "investment Company Act"). At certain times hereinafter, the Pegasus Fund, the Vanderbilt Fund and the PIC Fund may be collectively referred to as the "Funds." As defined herein, a mutual fund is, among other things, a company that engages in the business of investing, reinvesting or trading in securities with the monies of public investors.

2. At all relevant times herein, unindicted co-conspirator Pegasus Management Corporation was registered with the Securities Exchange Commission ("S.E.C.") as an investment advisor and was the investment advisor and administrator of the Pegasus Fund and the Vanderbilt Fund and as such was an affiliated person of these Funds within the meaning of the Investment Company Act.

3. At certain relevant times herein, unindicted co-conspirator Dual-Vest Research Corporation ("Dual-Vest") was registered with the S.E.C. as an investment advisor and was the investment advisor and administrator of the "PIC Fund" and was an affiliated person of the PIC Fund within the meaning of the Investment Company Act.

4. At all relevant times herein, unindicted co-conspirator Charter Diversified Services, Inc. ("Charter"), located at 1901 Avenue of the Stars, Los Angeles, California, was the parent corporation of Pegasus Management Corporation and Dual-Vest and as such was an affiliated person of the Funds within the meaning of the Investment Company Act.

5. At all relevant times herein, defendant RONALD J. LARANETA held the following positions:

a. President and Chairman of the Board of Directors of Charter;

b. Chairman of the Boards of Directors of the Funds;

c. Member of the Executive Committees of the Funds. The Executive Committee of each Fund, consisting of three board members, had the power to make investments without the prior approval of the other members of the Board of Directors (the "outside directors"); and

d. Chairman of Board of Directors of Pegasus Management Corporation and Dual-Vest.

6. At all relevant times herein, Basque Enterprises, Inc., was a corporation owned and controlled by defendant RONALD J. LARANETA.

7. At all relevant times herein, defendant JOSEPH J. LARANETA held the following positions:

a. Executive Vice-President, Treasurer and member of the Board of Directors of Charter, Pegasus Management Corporation, Dual-Vest and the Funds; and

b. Member of the Executive Committees of the Funds.

8. At all relevant times herein, Burreson & Co., Inc. ("Burreson & Co."), located at 4729 Lankershim Boulevard, North Hollywood, California, was a corporation engaged in the sale to the public of undeveloped desert land in Victor Valley, California.

9. At all relevant times herein, Commercial Petro-Gas, Inc. ("Commercial Petro-Gas"), formerly known as Burreson Petro-Gas, Inc., was a wholly owned subsidiary of Burreson & Co.

10. At all times relevant herein, defendant RODNEY H. BURRESON was the principal stockholder, President and Chairman of the Boards of Directors of Burreson & Co., (Commercial Petro-Gas and North American Credit Corporation ("North American Credit").

11. At all relevant times herein, North American Credit was a corporation principally owned and controlled by defendant BURRESON.

12. At all relevant times herein, California Bankers Trust Company ("CBT") was a trust company located at 523 W. 6th Street, Los Angeles, California.

13. At all relevant times, American City Bank, located at One Wilshire Building, Los Angeles, California, was

engaged in the business of commercial banking and was the single largest shareholder of CBT.

14. At all relevant times, by contractual agreement and for a fee, CBT acted as a trustee for Burreson & Co., collecting monies paid to Burreson & Co. as a result of its land sales. From July, 1973, to September, 1974, by contractual agreements and for a fee, CBT acted as the custodian bank for the Vanderbilt Fund and the Pegasus Fund and from October, 1973 to September, 1974, acted as custodian bank for the PIC Fund, maintaining physical custody of the assets of the Funds (*i.e.*, the securities owned or pledged to the Funds).

15. At all relevant times herein, defendant THOMAS L. CHANNELL was the President and Chief Executive Officer of CBT, and in August, 1973, purchased ten per cent (10%) of the stock of North American Credit.

16. At all relevant times herein, John B. Gilbert ("Gilbert") was a member of the Board of Directors of CBT.

17. At all relevant times herein, Oh Boy! Industries, Inc. ("Oh Boy!") was a corporation, located at 1561 First Street, San Fernando, California, engaged in the manufacture and sale of frozen food products.

18. At all relevant times herein, Pietro Vitale ("Vitale") was President and Chief Executive Officer of Oh Boy! and a member of the Board of Directors of the Pegasus Fund and the Vanderbilt Mutual Fund.

OBJECTS OF THE CONSPIRACY

19. From on or about January 1, 1973, to on or about September 3, 1974, within the Central District of California and elsewhere, defendants RODNEY H. BURRESON, RONALD J. LARANETA, THOMAS L. CHANNEL and JOSEPH J. LARANETA, along with unindicted co-

conspirators Charter, Pegasus Management Corporation and Dual-Vest and with other unindicted co-conspirators both known and unknown to the Grand Jury, did knowingly, willfully and unlawfully combine, confederate and agree, together and with each other, to commit certain offenses and crimes against the laws of the United States, to wit:

a. To knowingly and willfully convert approximately one million, two hundred thousand dollars ($1,200,000) belonging to registered investment companies, in violation of Title 15, United States Code, Section 80a-36;

b. To knowingly and willfully effect unlawful joint transactions by affiliated persons of registered investment companies, in violation of Title 15, United States Code, Section 80a-17(d) and Rule 17d-1 (17 C.F.R. 270.17d-1) of the rules and regulations promulgated by the United States Securities and Exchange Commission under the Investment Company Act;

c. To knowingly and willfully effect the unlawful acceptance of compensation by affiliated persons of registered investment companies, in violation of Title 15, United States Code, Section 80a-17(e);

d. To knowingly and willfully effect prohibited transactions by investment advisors of registered investment companies, in violation of Title 15, United States Code, Section 80b-6.

e. To knowingly and willfully use and employ manipulative and deceptive devices in the purchase or sale of securities, in violation of Title 15, United States Code, Section 77(q); and

f. To knowingly and willfully make use of the mails in furtherance of a scheme to defraud, in violation of Title 18, United States Code, Section 1341.

THE MEANS OF THE CONSPIRACY

20. The objects of the conspiracy were accomplished, in substance, through the acts, transactions and practices of the defendants which enabled them (a) to deceive and mislead the outside directors of the Funds into believing that certain securities purchases were prudent investments in the best interests of the Funds, (b) to defraud the public shareholders of the Funds out of the beneficial use of a substantial portion of the Funds' assets, and (c) to defraud the public shareholders of the Funds and prospective shareholders of the Funds who believed that the investment advisors of the Funds were free of conflicts of interest and were at all times carrying out their fiduciary responsibilities to the Funds.

21. Defendant BURRESON who knew that his companies were in dire financial straits as a result of substantial losses sustained in its operations, requiring an immediate cash investment from an outside source to avoid bankruptcy, and defendant CHANNEL, who feared that CBT would lose a significant portion of its business if Burreson & Co. went bankrupt, would and did attend meetings with defendants RONALD LARANETA and JOSEPH LARANETA, who as members of the Executive Committees of the Funds had the power to make investments on behalf of said Funds.

22. At these meetings, defendants RONALD LARANETA and JOSEPH LARANETA would and did inform defendants BURRESON and CHANNEL that Charter needed $750,000 to consummate the purchase of unindicted co-conspirator Dual-Vest, the investment advisor of the Federated Fund (later renamed the PIC Fund), a mutual fund, then located in Pittsburgh, Pennsylvania.

23. At these meetings, the defendants would and did discuss and agree upon the purchase by the Pegasus Fund

and the Vanderbilt Fund of $850,000 of 10% Burreson & Co. restricted debentures, with the understanding that only $350,000 of the money would actually be retained by Burreson & Co. and that the remaining $500,000 would be secretly used as collateral for a loan to enable Charter to purchase Dual-Vest.

24. In order to conceal Charter's use of the $500,000, the defendants would and did agree that the transfer of that money would be and was laundered and disguised through the use of third parties who would not be informed of the full scope of the transaction between Burreson & Co., Charter, the Pegasus Fund and the Vanderbilt Fund.

25. In order to further conceal Charter's use of the $500,000, defendants RONALD LARANETA and JOSEPH LARANETA would and did enter into negotiations with the American City Bank to obtain a loan of $750,000 for Charter (the "Charter Loan") which would be and was used to purchase Dual-Vest.

26. In order to further conceal Charter's use of the $500,000, defendant CHANNELL would and did induce a third party, to wit, John B. Gilbert ("Gilbert"), a director of CBT, to act as a guarantor of the Charter Loan with American City Bank by persuading Gilbert to enter into an agreement with Charter and defendants RONALD LARANETA and JOSPEH LARANETA which, among other things, made it appear that Gilbert would guarantee the Charter Loan by purchasing from American City Bank a $500,000 certificate of deposit which would be pledged as collateral for the Charter Loan.

27. In order to further conceal Charter's use of the $500,000 and to induce Gilbert to guarantee the Charter Loan, defendants BURRESON and CHANNELL would and did persuade Gilbert to execute a second agreement between

Burreson and Co. and Gilbert, whereby Burreson & Co., instead of Gilbert, would purchase the $500,000 certificate of deposit described in paragraph 26 above to be used as collateral for the Charter loan. Defendants BURRESON, RONALD LARANETA, CHANNELL and JOSEPH LARANETA would and did conceal from Gilbert the fact that the $500,000 used by Burreson & Co. to purchase the certificate of deposit originated from the $850,000 belonging to the Pegasus Fund and the Vanderbilt Fund which had been used to purchase the Burreson & Co. debentures.

28. To induce and persuade Gilbert to enter into the agreements set forth in paragraphs 26 and 27 above, defendant CHANNELL would and did inform Gilbert that defendants RONALD LARANETA and JOSEPH LARANETA had agreed to make CBT the custodian of the assets of the PIC Fund, resulting in significant new income to CBT.

29. It was a further part of the conspiracy that defendants RONALD LARANETA and JOSEPH LARANETA, to obtain a favorable vote by the outside directors of the Pegasus Fund and the Vanderbilt Fund ratifying the purchase of the Burreson & Co. debentures, would and did knowingly make false statements about material facts and would and did knowingly omit to state material facts to said outside directors as follows:

(a) Omitted to state that Burreson & Co. was experiencing serious financial difficulties, thereby making it an imprudent investment for the Pegasus Fund and the Vanderbilt Fund;

(b) Stated that the investment was secure by virtue of the fact that Burreson & Co. had pledged as collateral for the debentures first trust deeds worth 107% of the value of the debentures, which was in truth and in fact false since

Burreson & Co. had pledged as collateral for the debentures all-inclusive trust deeds having substantial underlying obligations making these debentures worth significantly less than represented;

(c) Omitted to state that $500,000 of the monies paid to Burreson & Co. would be and was diverted to the benefit of Charter, thereby defrauding the investors in the Pegasus Fund and the Vanderbilt Fund since Charter was an affiliated person of these Funds and was secretly using these Funds' money for Charter's own use.

30. Unindicted co-conspirator Pegasus Management Corporation, acting through its officers and employees, including defendants RONALD LARANETA and JOSEPH LARANETA, would and did cause to be transmitted through the mails the 1973 Annual Reports and the Prospectuses dated May 1, 1974 of the Pegasus Fund and the Vanderbilt Fund to existing and prospective shareholders of said Funds, which Annual Reports and Prospectuses would and did contain false statements about material facts and fail to state material facts to the shareholders as set forth in paragraph 29 above.

31. Subsequent to the aforesaid transaction, defendant BURRESON, whose companies had remained in desperate financial condition, and defendants RONALD LARANETA and JOSEPH LARANETA, who knew that Burreson & Co. still had a critical need for working capital and who also wanted to obtain additional monies belonging to the Funds for Charter's use, would and did agree that the PIC Fund would and did purchase a $750,000 9¾% restricted debenture of Burreson Petro-Gas, a wholly owned subsidiary of Burreson & Co., with the understanding that $150,000 of that money would be and was secretly paid back to Charter.

32. In order to conceal the payback to Charter, defendants BURRESON, RONALD LARANETA and JOSEPH LARANETA would and did agree that the payback would be and was laundered and secreted by transferring the money through North American Credit, a company controlled by defendant BURRESON, and thereafter transferring the money from North American Credit to Charter.

33. In order to conceal from the outside directors of the PIC Fund that Burreson Petro-Gas was owned and controlled by Burreson & Co., defendants BURRESON, RONALD LARANETA and JOSEPH LARANETA would and did agree that the name of Burreson Petro-Gas would be and was changed to Commercial Petro-Gas on the day before the purchase of the debenture by the PIC Fund.

34. It was a further part of the conspiracy that defendants RONALD LARANETA and JOSEPH LARANETA, to obtain a favorable vote from the outside directors of the PIC Fund ratifying the Burreson Petro-Gas transaction, would and did knowingly make false statements about material facts and would and did knowingly omit to state material facts to the outside directors as follows:

a. Omitted to state that Commercial Petro-Gas was a wholly owned subsidiary of Burreson & Co.;

b. Omitted to state that Burreson & Co. was experiencing serious financial difficulties, thereby making it an imprudent investment for the PIC Fund;

c. Omitted to state that Burreson Petro-Gas had been renamed Commercial Petro-Gas the day before the purchase of the debentures by the PIC Fund; and

d. Omitted to state that $150,000 of the $750,000 investment would be and was secretly diverted back to Charter, thereby defrauding the investors in the PIC Fund since Charter was an affiliated person of the PIC Fund and

was secretly using the PIC Fund's money for Charter's own use.

35. Defendant RONALD LARANETA, seeking to divert for Charter's use additional monies belonging to the Funds, would and did meet with Pietro Vitale, president of Oh Boy!, to discuss the purchase by the PIC Fund of $350,000 of 11% Oh Boy! subordinated debentures and $550,000 of Oh Boy! preferred stock. At these meetings, defendant RONALD LARANETA knew that Vitale was seeking $900,000 of financing in the form of an initial $350,000 investment in Oh Boy! in order to improve Oh Boy!'s current financial statement and an additional investment of $550,000 to purchase a plant facility in New Jersey.

36. At these meetings, defendant RONALD LARANETA would and did persuade and induce Vitale to agree to the above transaction with the understanding that physical custody of $550,000 would be and was paid back from Oh Boy! to defendant RONALD LARANETA. Defendant RONALD LARANETA would and did promise Vitale that the $550,000 would be returned to Oh Boy! as soon as the negotiations to purchase the New Jersey facility were consummated. In truth and in fact, defendant RONALD LARANETA never intended to return the $550,000 to Oh Boy! and would and did refuse to return said money to Oh Boy! when Vitale requested him to do so.

37. Defendant LARANETA, in order to conceal the payback, would and did disguise the payback as a loan of $550,000 from Oh Boy! to Basque Enterprises, a corporation controlled by defendant RONALD LARANETA. Thereafter, defendant RONALD LARANETA would and did transfer $550,000 from Basque Enterprises to Charter.

38. Defendant RONALD LARANETA, to obtain a favorable vote from the outside directors ratifying the Oh Boy! transaction, would and did knowingly make false statements about material facts and would and did knowingly omit to state material facts to the outside directors of the PIC Fund as follows:

a. Omitted to state Oh Boy! was experiencing serious financial difficulties, thereby making it an imprudent investment for the PIC Fund; and

b. Omitted to state that $550,000 of the $900,000 investment would be and was secretly diverted to the use of Charter, thereby defrauding the investors in the PIC Fund since Charter was an affiliated person of the PIC Fund and was using the PIC Fund's money for Charter's own use.

OVERT ACTS

To effect the objects of the conspiracy, defendants BURRESON, RONALD LARANETA, CHANNEL and JOSEPH LARANETA committed the following overt acts:

1. In or about July, 1973, defendant CHANNELL instructed CBT's attorneys, Musick, Peeler & Garrett, to prepare two agreements: (a) an agreement between Charter, defendants RONALD LARANETA, and JOSEPH LARANETA and Gilbert, whereby Gilbert ostensibly guaranteed the Charter Loan at American City Bank and, (b) a second agreement between Burreson & Co. and Gilbert, providing for Burreson & Co. to purchase a $500,000 certificate of deposit at American City Bank to be pledged as security for the Charter Loan.

2. On or about July 10, 1973, defendants RONALD LARANETA and JOSEPH LARANETA signed the agreement set forth in paragraph 1(a) above.

3. On or about July 10, 1973, defendant BURRESON signed the agreement as set forth in paragraph 1(b) above.

4. On or about July 10, 1973, defendants RONALD LARANETA and JOSEPH LARANETA signed a loan agreement with American City Bank in the amount of $750,000.

5. On or about July 10, 1973, defendants RONALD LARANETA and JOSEPH LARANETA caused the Vanderbilt Fund to purchase $350,000 and the Pegasus Fund to purchase $500,000 of 10% Burreson & Co. restricted debentures.

6. On or about July 10, 1973, defendant BURRESON caused Burreson & Co. to purchase a $500,000 certificate of deposit at the American City Bank.

7. On or about July 10, 1973, defendants RONALD LARANETA and JOSEPH LARANETA used the $750,000 Charter Loan to purchase Dual-Vest, the Investment Advisor to the Federated Fund, the former name of the PIC Fund.

8. On or about July 24, 1973, defendants RONALD LARANETA and JOSEPH LARANETA met with the outside directors of the Pegasus Fund and the Vanderbilt Fund to obtain ratification of the purchase of the Burreson & Co. debentures.

9. On or about October 23, 1973, defendants RONALD LARANETA caused the PIC Fund to purchase a $350,000 Oh Boy! 11% subordinated debenture and $550,000 worth of Oh Boy! preferred stock.

10. On or about October 24, 1973, defendant RONALD LARANETA signed a promissory note purporting to show a loan in the amount of $550,000 from Oh Boy! to Basque Enterprises.

11. On or about January 24, 1974, defendant BURRESON instructed Billy Neighbors, treasurer of Burreson &

Co., to change the name of Burreson Petro-Gas to Commercial Petro-Gas.

12. On or about January 24, 1974, defendants RONALD LARANETA and JOSEPH LARANETA directed the PIC Fund to purchase a $750,000 restricted 9¾% Burreson & Co. debenture.

13. On or about January 24, 1974, defendant BURRESON caused North American Credit to open a checking account at American City Bank;

14. On or about January 25, 1974, defendant BURRESON instructed Billy Neighbors to transfer $150,000 from Commercial Petro-Gas to the North American Credit checking account at the American City Bank.

15. On or about January 25, 1974, defendant BURRESON instructed Billy Neighbors to prepare and sign a check in the amount of $150,000 payable to Charter drawn on the North American Credit checking account at the American City Bank.

16. On or about February 19, 1974, defendants RONALD LARANETA and JOSEPH LARANETA met with the outside directors of the PIC Fund to obtain ratification of the purchase of the $750,000 Burreson & Co. debenture.

COUNT TWO

[15 U.S.C. §80a-36]

On or about July 10, 1973, within the Central District of California, defendants RODNEY H. BURRESON, RONALD J. LARANETA, THOMAS L. CHANNELL and JOSEPH J. LARANETA did unlawfully and wilfully cause to be converted to use of another, $500,000 of the monies of the Pegasus Fund and the Vanderbilt Fund.

COUNT THREE

[15 U.S.C. §80a-17(d); 18 U.S.C. §2]

On or about July 10, 1973, within the Central District of California, Charter Diversified Securities, not a defendant herein, and defendants RONALD J. LARANETA and JOSEPH J. LARANETA knowingly, wilfully, and unlawfully, while being affiliated persons of registered investment companies, to wit: the Pegasus Fund and the Vanderbilt Fund, did act as principals to effect a transaction, to wit: the purchase by the Pegasus Fund of $500,000 and by the Vanderbilt Fund of $350,000 of 10% Burreson & Co. debentures, in which said registered investment companies were joint and several participants with such persons and affiliated persons, in contravention of Title 15, United States Code, Section 80a-17(d) and the rules and regulations duly prescribed by the Securities and Exchange Commission, to wit: 17 C.F.R. 270. 17d-1; Rule 17d-1.

At said time and place, defendants RODNEY H. BURRESON and THOMAS L. CHANNEL aided, abetted, counseled, induced and procured the commission of said offense.

COUNT FOUR

[15 U.S.C. §80a-17(e); 18 U.S.C. §2]

On or about July 10, 1973, within the Central District of California, Charter Diversified Services, not a defendant herein, while being affiliated person of registered investment companies, to wit: The Pegasus Fund and the Vanderbilt Fund, did, while acting as agent, and not in the course of such person's business as an underwriter or broker, accept from Burreson & Co., compensation, to wit, $500,000, other than a regular salary or wages from such registered investment companies for the purchase of property to and for such registered investment company.

At said time and place, defendants RODNEY H. BURRESON, RONALD J. LARANETA, THOMAS L. CHANNELL and JOSEPH J. LARANETA aided, abetted, counseled, induced and procured the commission of said offenses.

COUNT FIVE

[15 U.S.C. §80b-6; 18 U.S.C. §2]

1. On or about July 24, 1973, in the Central District of California and elsewhere, Pegusus Management Corporation, an investment advisor, not a defendant herein, knowingly, wilfully and unlawfully, by the use of the mails and means and instrumentalities of interstate commerce did devise and intend to devise a scheme and artifice to defraud and did engage in transactions, practices and courses of business which operated and did operate as a fraud and deceit upon its clients, to wit, the Pegusus fund and the Vanderbilt Fund, in contravention of Title 15, United States Code, Section 80b-6.

2. The Grand Jury hereby realleges all of the allegations set forth in paragraphs 21 through 30 in Count One of this Indictment as constituting and describing the means by which the defendants committed the offense charged in these counts.

3. At said time and place, defendants RONALD J. LARANETA and JOSEPH J. LARANETA aided, abetted, counseled, induced and procured the commission of said offense.

4. The defendants on or about July 16, 1973, wilfully and knowingly caused to be transmitted by United States mail from the Pegasus Fund and the Vanderbilt Fund, 1901 Avenue of the Stars, to Roy McNeill, 900 Wilshire Blvd., Los Angeles, California, a notice of a meeting of the Board of Directors of the above Funds.

COUNT SIX

[15 U.S.C. §80a-36; 18 U.S.C. §2]

On or about October 23, 1973, within the Central District of California, defendant RONALD J. LARANETA did unlawfully and wilfully cause to be converted to another $550,000 of the monies and funds of the PIC Fund, a registered investment company.

COUNT SEVEN

[15 U.S.C. §80a-17(d)]

On or about October 23, 1973, within the Central District of California, Charter Diversified Services, not a defendant herein, and defendant RONALD J. LARANETA knowingly, wilfully and unlawfully, while being affiliated persons of a registered investment company, to wit, the PIC Fund, did act as principals to effect a transaction to wit: the purchase by the PIC Fund of a $350,000 restricted Oh Boy! Industries 11% subordinated debenture and $550,000 of the preferred stock of Oh Boy! Industries in which said registered investment company was a joint and several participants with such persons and affiliated persons, in contravention of Title 15, United States Code, §80a-17(d) and the rules and regulations duly prescribed by the Securities and Exchange Commission, to wit: 17 C.F.R. 270. 17d-1; Rule 17d-1.

COUNT EIGHT

[15 U.S.C. §80a-17(e); 18 U.S.C. §2]

On or about October 23, 1973, within the Central District of California, Charter Diversified Services, not a defendant herein, while being an affiliated person of a registered investment company, to wit: The PIC Fund, did, while acting as agent, and not in the course of such person's business as an underwriter or broker, accept from Oh Boy! Industries and Basque Enterprises, compensation, to wit, $550,000,

other than a regular salary or wages from such registered investment company for the purchase of property to and for such registered investment company.

At said time and place, defendant RONALD J. LARANETA aided, abetted, counseled, induced and procured the commission of said offense.

COUNT NINE

[15 U.S.C. §80b-6; 18 U.S.C. §2]

1. On or about November 20, 1973, in the Central District of California and elsewhere, Dual-Vest Research Corporation, an investment advisor, not a defendant herein, knowingly, wilfully and unlawfully, by the use of the mails and means and instrumentalities of interstate commerce did devise and intend to devise a scheme and artifice to defraud and did engage in transactions, practices and courses of business which operated and did operate as a fraud and deceit upon its client, to wit, the PIC Fund, in contravention of Title 15, United States Code, Section 80b-6.

2. The Grand Jury hereby realleges all of the allegations set forth in paragraphs 35 through 38 in Count One of this Indictment as constituting and describing the means by which the defendant committed the offense charged in these counts.

3. At said time and place, defendant RONALD J. LARANETA aided, abetted, counselled, induced and procured the commission of said offense.

4. The defendant on or about October 24, 1973, wilfully and knowingly caused to be transmitted by United States mail from the PIC Fund, 1901 Avenue of the Stars, Los Angeles, California, to California Bankers Trust Company, 523 W. 6th Street, Los Angeles, California, an order ticket for the purchase of 550 shares of preferred stock of Oh Boy! Industries.

COUNT TEN

[15 U.S.C. §80a-36]

On or about January 24, 1974, within the Central District of California, defendants RODNEY H. BURRESON, RONALD J. LARANETA, and JOSEPH J. LARANETA did unlawfully and wilfully cause to be converted to use of another $150,000 of the monies and funds of the PIC Fund, a registered investment company.

COUNT ELEVEN

[15 U.S.C. §80a-17(d); 18 U.S.C. §2]

On or about January 24, 1974, within the Central District of California, Charter Diversified Services, not a defendant herein, and defendants RONALD J. LARANETA and JOSEPH J. LARANETA, knowingly, wilfully and unlawfully, while being affiliated persons of a registered investment company, to wit, the PIC Fund, did act as principals to effect a transaction, to wit: the purchase by the PIC Fund of a $750,000 restricted 9¼% Commercial Petro-Gas, Inc. debenture in which said registered investment company was a joint and several participant with such persons and affiliated persons, in contravention of the rules and regulations duly prescribed by the Securities and Exchange Commission, to wit: 17 C.F.R. 270. 17d-1; Rule 17d-1.

At said time and place, defendant RODNEY H. BURRESON aided, abetted, counseled, induced and procured the commission of said offense.

COUNT TWELVE

[15 U.S.C. §80a-17(e); 18 U.S.C. §2]

On or about January 24, 1974, within the Central District of California, Charter Diversified Services, not a defendant herein, while being an affiliated person of a registered investment company, to wit: The PIC Fund, did, while acting

as agent, and not in the course of such person's business as an underwriter or broker, accept from Commercial Petro-Gas and North American Credit compensation, to wit, $150,000, other than a regular salary or wages from such registered investment company for the purchase of property to and for such registered investment company.

At said time and place, defendants RODNEY H. BURRESON, RONALD J. LARANETA AND JOSEPH J. LARANETA aided, abetted, counseled, induced and procured the commission of said offense.

COUNT THIRTEEN

[15 U.S.C. §80b-6; 18 U.S.C. §2]

1. On or about February 19, 1974, in the Central District of California and elsewhere, Dual-Vest Research Corporation, an investment advisor, not a defendant herein, knowingly, wilfully and unlawfully, by the use of the mails and means and instrumentalities of interstate commerce did devise and intend to devise a scheme and artifice to defraud and did engage in transactions, practices and courses of business which operated and did operate as a fraud and deceit upon its client, to wit, the PIC Fund, in contravention of Title 15, United States Code, Section 80b-6.

2. The Grand Jury hereby realleges all of the allegations set forth in paragraphs 31 through 34 in Count One of this Indictment as constituting and describing the means by which the defendants committed the offense charged in these counts.

3. At said time and place, defendants RONALD J. LARANETA and JOSEPH J. LARANETA aided, abetted, counselled, induced and procured the commission of said offense.

4. The defendants on or about January 25, 1973, wilfully and knowingly caused to be transmitted by the United

States mail from the PIC Fund, 1901 Avenue of the Stars, Los Angeles, California to California Bankers Trust Company, 523 W. 6th Street, Los Angeles, California, an order ticket for the purchase of a Commercial Petro-Gas debenture.

COUNT FOURTEEN
[15 U.S.C. §77(q)]

1. The Grand jury realleges paragraphs 19 through 38 of Count One ("Objects and Means of The Conspiracy") and paragraph 4 of Count Thirteen of this Indictment and incorporates those paragraphs herein as being the means by which the defendants committed the offense described in this Count.

2. From on or about January 1, 1973, to on or about September 3, 1974, within the Central District of California, defendants RONALD J. LARANETA and JOSEPH J. LARANETA, in connection with the purchase of the Burreson & Co., and Commercial Petro-Gas debentures, and the Oh Boy! debentures and preferred stock, as aforementioned, did knowingly, wilfully and unlawfully, directly and indirectly, use the means and instrumentalities of interstate commerce and the mails to use and employ a scheme and artifice to defraud, to make untrue statements of material facts and to omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and to engage in acts, practices and courses of business which did operate as a fraud and deceit upon the Pegasus Fund, the Vanderbilt Fund and the PIC Fund and the purchasers of the securities described herein, and the stockholders of said funds.

COUNTS FIFTEEN AND SIXTEEN
[18 U.S.C. §1341]

1. From on or about January 1, 1973, to on or about September 3, 1974, within the Central District of California and elsewhere, defendants RONALD J. LARANETA, and

JOSEPH J. LARANETA knowingly, wilfully and unlawfully did devise and intend to devise a scheme and artifice to defraud the Pegasus Fund, the Vanderbilt Fund and the PIC Fund, registered investment companies within the Investment Company Act of 1940, 15 U.S.C. §80 *et. seq.*, and the existing and prospective shareholders of said funds, and for the purpose of executing said scheme and artifice to defraud, and attempting to do so, did place and cause to be placed in an authorized depository for mail matter and caused to be delivered by mail according to the directions thereon, certain matter to be delivered by the Postal Service, as more particularly set forth below.

2. The allegations contained in paragraphs 19 through 38 ("Objects and Means of the Conspiracy") of Count One of this Indictment, are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in paragraph one above.

3. On or about the dates set forth below, within the Central District of California, defenants RONALD J. LARANETA, and JOSEPH J. LARANETA, for the purpose of executing the aforementioned scheme and artifice to defraud, and attempting to do so, did knowingly, wilfully and unlawfully cause to be placed in an authorized depository for mail matter, and caused to be delivered by the Postal Service according to the directions thereon, envelopes addressed as follows:

Count 15, Date, February, 1974. Sender, The Vanderbilt Fund. Addressee, Denise J. Floryan, 1112 E. Grand Avenue, Alhambra, California 91801.

Count 16, Date, February, 1974. Sender, The Pegasus Fund. Addressee, Peter Forrest, 2221 Beverly Glen Place, L.A., Ca. 90024.

A TRUE BILL

/s/ CHARLES R. MAYNOR
Foreman

/s/ William D. Keller
WILLIAM D. KELLER
United States Attorney